APPROVED BY THE BOARD AT ITS MEETING HELD ON MARCH 8, 2019

MINUTES FOR THE MEETING OF THE BOARD OF LAND AND NATURAL RESOURCES

DATE:

FRIDAY, October 12, 2018

TIME:

9:15 A.M.

PLACE:

KALANIMOKU BUILDING

LAND BOARD CONFERENCE ROOM 132

1151 PUNCHBOWL STREET HONOLULU, HAWAI'I 96813

MEMBERS

Jimmy Gomes Chris Yuen Sam Gon Tommy Oi Stan Roehrig Keone Downing

STAFF

Russell Tsuji-Land lan Hirokawa-Land Ed Underword-DOBOR Richard Howard-Land Megan Statts-DOBOR

David Smith-DOFAW Curt Cottrell-Parks Daniel Ornellas-Land Tom Ogawa-DAR Ray Ichimura-DAR

OTHERS

Dan Morris/AG
Denver Coon/J2,J8,J9
LiAnne Drissen/J2,J8,J9
John Pender/J1
Ross Smith/DOT-AIR

Davis Yogi-DOT-HAR Jim Coon/J2,J8,J9 Gary Strutz/J1 Peter Lee/E1

Ross Smith/DOT-A Rodney Kilbrun/D6 Susan Cordell

Lynn MCrory/J14, D4 Rick Strunny/D2 Yvonne Izu/D4

In the absence of Chair Case, Member Gomes called the meeting to order at 9:15 a.m. Member Roehrig read the contested case statement.

ITEM A-1 Request Approval for the July 27, 2018 Meeting Minutes.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Roehrig, Gon) unanimous.

ITEM J-2 Continuation of Revocable Permit No. 38 to Coon Brothers, Inc., Mānele Small Boat Harbor, Lana'i City, Island of Lana'i, Hawai'i, Tax Map Key: (2) 4-9-017:006 (Por.).

Ed Underwood, Division of Boating and Ocean Recreation. The Division is working on a long-term disposition and has a legal issue whether to issue a lease or an easement.

Board Discussion

The Board felt that this has taken too long to resolve. Move forward with their review and get this matter resolved.

Public Testimony

Denver Coon, stands by his written testimony previously submitted.

Jim Coon, conveyed the background of the dock at the harbor and is waiting for a long-term disposition.

Lianne Drieseen and Leimana DeMante, provided testimony in support of the continuation of the Revocable Permit.

Amendment:

Staff/AG report back on the progress on a 35-year long-term disposition in 6-months on the status of the easement/lease.

MOTION

Approved as amended (Yuen, Gon) unanimous.

- ITEM J-8 Declare installation of an existing Offshore Mooring Exempt from Requirements of Chapter 343, Hawaii Revised Statues, and Title 11, Chapter 200, Hawaii Administrative Rules and approve installation after-the-fact outside of an existing Offshore Mooring area, Lahaina, Island of Maui, Hawai'i, for Kaanapali Queen, Inc.
- ITEM J-9 Declare installation of an existing Offshore Mooring Exempt from Requirements of Chapter 343, Hawaii Revised Statues, and Title 11, Chapter 200, Hawaii Administrative Rules and approve installation afterthe-fact Outside of an existing Offshore Mooring area, Lahaina, Island of Maui, Hawai'i, for Trilogy Corporation.

Ed Underwood, DOBOR, presented J-8 and J-9, did not have anything else to add to the submittals.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Roehrig, Oi) unanimous.

ITEM M-10 Issuance of Gratis Construction Right-of-Way and Gratis Revocable Permit to Department of Land and Natural Resources, Division of Boating and Ocean Recreation, for Easements for access, utility and waterline purposes, Kawaihae Harbor, Island of Hawai'i, Tax Map Key no.:(3) 6-1-03:26 (portion).

Davis Yogi, DOT, Harbors Division, presented the submittal.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Roehrig, Oi) unanimous.

- ITEM M-1 Issuance of a Revocable Permit for Passenger Check-In, Asiana Airlines, Inc., Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-003: 042 (Portion).
- ITEM M-2 Issuance of a Revocable Permit for Parking and Storage of Rental Car Vehicles, EAN Holdings, LLC, Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-004: 07 and 087.
- ITEM M-3 Issuance of a Revocable Permit for Passenger Check-In, Hawaiian Airlines, Inc., Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-003: 058 (Portion).
- ITEM M-4 Issuance of a Revocable Permit for a Maintenance Office and Storage Space, Kone Inc., Daniel K. Inouye International Airport, Tax Map Keys: (1) 1-1-003: 001 (Portion) and (1) 1-1-003: 066 (Portion).
- ITEM M-5 Issuance of a Revocable Permit for Passenger Check-In, Office Space, and Area for Rubbish Dumpster, Omni Air International, LLC, Daniel K. Inouye

International Airport, Tax Map Keys: (1) 1-1-003: 053 (Portion) and (1) 1-1-003: 001 (Portion).

- ITEM M-6 Issuance of a Revocable Permit for Equipment Parking, Qantas Airways Limited, Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-003: 066 (Portion).
- ITEM M-7 Issuance of a Revocable Permit for Interim Parking of Rent a Car Shuttle Buses, Robert's Tours and Transportation, Inc., Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-003: 01.

BOARD DISCUSSION

Downing questioned the reasoning of \$25.00 rate and how it was different from Item M-2? Smith replied, it is part of an existing project for the airport we are trying to find a place for the buses in the interim. M-2 is a Revocable Permit to the rental car company.

Smith said the \$25.00 is the minimum fee. Smith, they are providing and maintaining the shuttle buses that move the people to and from different areas in the airport. Smith conveyed that this is contract with the on-site operators.

The Board felt this was not in the best interest of the public.

Yuen added an amendment to the submittal. The RP shall not be renewed past the first year and to bring it back to the Board.

MOTION

Approved as amended (Yuen, Roehrig) 3-Aye (Yuen, Gon, Roehrig) 3-Nay (Downing, Gomes, Oi). Motion DOES NOT PASS

Yuen moved to defer. Gon second the Motion to defer, Unanimous.

ITEM M-8 Issuance of a Revocable Permit for a Baggage Workstation and Space to Mount a FIDS Monitor, Southwest Airlines Co., Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-003: 053 (Portion).

Board Discussion

Roehrig asked if Smith spoke to the Airport Manager at Hilo? Smith, conveyed they have not committed and it was not a priority.

ITEM M-9 Issuance of a Revocable Permit for Parking and Storage of Rental Car Vehicles, EAN Holdings, LLC, Ellison Onizuka Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 32.

Ross Smith, DOT-Airports, presented Items M-1 through M-9 and asked if the Board had any questions.

Board Discussion

No further questions

Public Testimony-None

MOTION

Approved as submitted, Items M-1 to Item-6 and Items M-8 and M-9 (Oi, Roehrig) unanimous.

Approve installation of two new Offshore Moorings Outside of a designated Offshore Mooring area, Kaunolu Bay and Huawai Bay, Island of Lanai, Hawai'i, for Lanai Resorts, LLC (dba Pūlama Lana'i)

Ed Underwood, Division of Boating and Recreation, presented the submittal. Requested an acceptance of the FONSI at the next Board meeting as it wasn't in the submittal.

Board Discussion

Downing asked whether the community agreed on adding the moorings? Underwood replied, yes.

Gomes, requested to see an Environmental Assessment.

Public Testimony

Lynn McCury, Pulama Lanai relayed that they have monthly meetings with the community. Max Kincad had concerns that were resolved. We took him out on the water to show him where the moorings would be located.

MOTION

Deferred (Roehrig, Yuen) unanimous.

Consent to Sublease Under General Lease No. S-6110, Napu`u Water, Inc., Lessee/Sublessor, NWI Solar Project 1, LLC, Sublessee, for Solar Array Purposes, Puuwaawaa, North Kona, Hawai'i, Tax Map Key: (3) 7-1-001:010.

Russell Tsuji, Land Division, presented the submittal. The applicant is present to answer any questions.

Board Discussion

Roehrig asked if this would benefit the community? Gomes asked where does the water come from and how much do they use? Oi asked who is paying for the maintenance of the well?

Rick Strunny, NWI Solar Project 1, LLC, replied, the community does benefits, the water comes from wells on private lands that are authorized by CWRM. Applicant will maintain the well.

Public Testimony-None

MOTION

Approved as submitted (Roehrig, Downing) unanimous

Request Approval to extend the Term of Lease No. H-89-13, Pacific-West Fuels, Inc., for an additional fifteen years to amortize the Cost of Substantial Improvements situated at Lahaina Small Boat Harbor, Island of Maui, Hawai'i, Tax Map Key: (2) 4-6-001: 014, 017 (Por.) Find that the extension of the Lease is based on the Economic Life of the Improvements that were made to the demised premises.

Ed Underwood, Division of Boating & Recreation. These are good tenants and do not have anyone else interested in this lease. Applicant is present to answer any questions the Board may have.

Board Discussion

Downing asked if how much they were paying? Yuen asked if the State collects a percentage of gross? Gomes asked if they bid on their fuel supply?

Gary Strutz and John Pender, applicant. They pay \$100,000 - \$150,000. The breakdown is base rent plus 5.2% of gross sales. Regarding fuel supply, they do go out to bid on their fuel. There are only two providers on island. Pender explained how they manage the business and how it is maintained.

Public Testimony-None

MOTION

Approved as submitted (Oi, Roehrig) unanimous.

ISSUANCE of a Right-of-Entry to Rons Construction Corporation for Temporary Staging of Construction Materials and Equipment Purposes at Makiki Valley State Park, Makiki Heights, Tantalus, Honolulu, O'ahu, Hawai'i, Tax Map Key: (1) 2-5-020:004 (Portion).

Curt Cottrell, State Parks, did not have anything else to add to the submittal. The applicant is present to answer any questions.

Board Discussion-None

Public Testimony

Peter Lee, Rons Construction asked if they could add a clarification, they would like to put a trailer there as well. Cottrell said they will work with them. The project will take approximately 12-months

MOTION

Approved as submitted (Roehrig, Gon) unanimous.

NO ACTION ITEM-Informational

ITEM C-1 Progress briefing for Research Projects, Educational Tours, and Administrative challenges of the Hawaii Experimental Tropical Forest.

David Smith, Division of Forestry and Wildlife. Susan Cordell presented the annual update.

ISSUANCE of Right-of-Entry Permit to Association of Surfing Professionals (ASP) North America, LLC; dba World Surf League, for a Women's Professional Surfing Competition at Lipoa Point, Honolua, Lahaina, Maui, Tax Map Key: (2) 4-1-001: Portion of 010.

Daniel Ornellas, Land Division (Maui). Amended the third paragraph stating that lieu of 3 acres it should be 2 acres. The applicant is present to answer any questions.

Board Discussion

Oi asked the Applicant if they read the submittal and agree to the terms. Kilborn conveyed that they did.

Public Testimony-None

Rodney Kilborn, representing the Applicant. Stated that last year they were unable to provide pictures of the event due to weather. Hopefully, the weather will be cooperate this year.

MOTION

Approved as submitted (Downing, Roehrig) unanimous.

ITEM D-5 Amend Two Prior Board of Land and Natural Resources Actions of 1) August 25, 2017, under Agenda Item D-9, as amended, and 2) May 8, 2015,

under Agenda Item D-8, Both Affecting Tax Map Key: (2) 3-9-011:008 CPR 0001, and an Area Seaward of Tax Map Key: (2) 3-9-011:008 CPR 0001, located in Waiohuli-Keokea Homesteads, and Beach Lots, Waiohuli-Keokea (Kihei), Wailuku, Maui.

The purposes of these amendments are 1) to approve an additional term, non-exclusive easement seaward of Tax Map Key: (2) 3-9-011:008 CPR 0001 for seawall purposes, and 2) to change the applicant requesting the previously approved easements affecting Tax Map Key: (2) 3-9-011:008 CPR 0001 and the area seaward of Tax Map Key: (2) 3-9-011:008 from "Association of Owners of 1688 Halama Street Condominium" to "Rand 2013 Living Trust, Dated November 25, 2013.

Ian Hirokawa, Land Division presented the submittal.

Board Discussion-None

Public Testimony

Peter Holfritz, Attorney for the Owner. They are in full agreement with Staff's submittal. They want to be compliant and have all permits in place.

MOTION

Approved as submitted (Roehrig, Yuen) unanimous.

12:00 pm: Break

12:45 pm: Back in Session

ITEM D-4 Annual Renewal of Revocable Permits for the County of Maui, See Exhibit 2.

Richard Howard, Daniel Ornellas (Maui), Land Division. The permits are divided into five categories as defined on page 2 of the submittal.

Board Discussion

RP 5710:

Roehrig asked if this was a water RP? Ornellas conveyed that the permit is to reconstruct water storage tank and transmission line. This is to be converted to an access and utility easement.

RP 5834: Roehrig asked how big is this revetment? Ornellas said it is significant. It is in South Kihei fronting a resort area. Working on certifying the shoreline easement, the County of Maui is working on this to distinguish private

property and public access.

Downing asked why this was not under annual market rent it appears to be commercial use? Ornellas said it is a condo/timeshare deal. Downing is looking for consistently.

Gomes asked how long will it taken to resolve all these issues for Act 90, to transfer some of these properties to DOA? Is there timetable to convert those designated to get an easement of a long-term disposition? Tsuji conveyed they have monthly meetings with DOA. They have conditions on certain items and the Staff is continuing to work on it to be acceptable to DOA.

The general discussion revolved around timelines, and challenges the staff has to deal with that hinders the progress to convert certain parcels to long-term dispositions and how they can successfully conduct a public auction.

Public Testimony-None

Amendment:

As to revocable Permits Nos. 7493, 7545, 7571 and 7778, staff is to research whether the area in use under those permits actually are in the Conservation District or whether the RP boundary simply borders the Conservation District but the land in use is zoned otherwise. If the land area being used is in fact in the Conservation District, then as a condition of the renewal of the permit, the Permittee must start the process of applying for the approval of its use of the lands in the Conservation District, whether by application for a permit or otherwise.

MOTION

Approved as amended (Roehrig, Oi) unanimous.

ITEM D-8 Issuance of Right-of-Entry Permit to AUVSI Foundation for Maritime RobotX Challenge Hawaii 2018 from December 1, 2018 to December 15, 2018 at Sand Island, Honolulu, O'ahu, Tax Map Key: (1) 1-5-041: portions of 006, 334 and seaward.

Russell Tsuji, Land Division presented the submittal.

Board Discussion-None

Public Testimony

MOTION

Approved as submitted (Oi, Gon) unanimous.

Request for Approval to Authorize the Chairperson to approve and sign a Memorandum of Agreement between the State of Hawaii Department of Land and Natural Resources Division of Forestry and Wildlife and the Kauai Humane Society (KHS) for wildlife care and rehabilitation on the Island of Kauai.

and

Request approval of Declaration of Exemption from Chapter 343, Hawaii Revised Statutes, environmental compliance requirements for the subject Memorandum of Agreement.

Jim Cogswell, Division of Forestry and Wildlife presented the submittal.

Board Discussion-None

Oi, asked, if the preventive measures by the County and KIUC to minimize the fallout of the birds, has there been any change? Cogswell replied that they have approximately 100-120 a year. The Federal government has permission to shoot the birds if they cause a safety hazard. We are working towards a habitat for them.

Public Testimony-None

MOTION

Approved as submitted (Roehrig, Yuen) unanimous.

- ITEM D-1 Issuance of Right-of-Entry Permit to Greg Van Dyke, on behalf of Round Table Owners Association at Kalapaki Beach for Volleyball Tournament; Kalapaki Beach, Līhu'e, Kaua'i, Tax Map Key: (4) 3-5-002: seaward of 002.
- Authorize the Issuance of a Management Right-of-Entry Permit to the Department of Transportation Airports Division for Airport Purposes, Keahole Airport, Kalaoa, North Kona, Hawai'i, Tax Map Key: (3) 7-3-043:003 (por.).
- Request for Issuance of Right-of-Entry Permit to Vares Contracting, Inc. on Lands located at Kahana, Lahaina, Maui, Tax Map Key: (2) 4-3-005: Seaward of 029.

Russell Tsuji, Land Division presented Items D-1, D-3 and D-7.

Board Discussion

Item D-3: Roehrig is for all the tenants and lessees to use? Tsuji relayed that pending the Executive Order for the land exchanged, this gives them a Right-of-Entry to that land.

Public Testimony-None

MOTION

Approved as submitted Items D-1, D-3 and D-5 (Roehrig, Gon) unanimous.

Request for Approval to Amend an Existing Federally-Funded Project Agreement between the Department of Land and Natural Resources (DLNR) and the Research Corporation of the University of Hawaii (RUCH) for the Division of Aquatic Resources (DAR) Research Project Entitled "Hawaii Marine Recreational Fishing Survey"

Tom Ogawa and Ray Ichimura, Division of Aquatic Resources, presented the submittal.

Board Discussion

The Board asked how do they quantify what the catch is recreationally? Ichimura replied that it is very challenging as it is hard to pinpoint, the survey is random, but whatever data they can collect is significant. Collecting data by island is important.

Public Testimony-None

MOTION

Approved as submitted (Oi, Gon) unanimous.

Request for Approval to Enter into a Federally Funded Sole Source Contract for year three (3), Final Phase of the Grant, not to Exceed \$123,065.00, between the Board of Land and Natural Resources and Cascadia Research Collective (CRC), to provide services to support State efforts to Minimize and Mitigate incidental take of False Killer Whales and other Endangered Cetaceans in Hawaii; Declaration of Exemption for Contract Actions under HRS Chapter 343 and HAR Chapter 11-200.

Tom Ogawa, Division of Aquatics. Stands by the submittal and is happy to answer any questions.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Roehrig, Gon) unanimous.

2:20 Break

2:45 Back in Session

Related Fees.

Request approval to initiate Rule-Making Proceedings, including Public Hearing, to amend and compile Title 13, Hawai'i Administrative Rules (HAR), Chapters 13-234, Fees and Charges, and 13-253, Catamaran Registration Certificate, Other Registration, and Commercial Use Permit Fees for the purpose of Revising Fee and Charge Requirements and Increasing Boating and Ocean Recreation Fees and Charges, including, but not limited to, Mooring Fees, State Boating Facility-Related Fees, Commercial Use Permit Fees, Ramp Decal Fees, and Passenger Cruise-

The proposed rules can be reviewed in person at a Division of Boating and Ocean Recreation (DOBOR) district office from 8:00 am to 3:30 pm, Monday through Friday, except state Holidays as follows: Hawaiʻi District: Honokōhau Small Boat Harbor, 74-380 Kealakehe Parkway, Kailua-Kona, HI 96740; Kauaʻi District: Nawiliwili Small Boat Harbor, 2494 Niumalu Road, Līhuʻe, HI 96766; Maui District: Maʻalaea Small Boat Harbor, 101 Maʻalaea Boat Harbor Road, Wailuku, HI 96793; Oʻahu District: Keʻehi Small Boat Harbor, 4 Sand Island Access Road, Honolulu, HI 96819.

The proposed rules can be reviewed online at: http://ltgov.hawaii.gov/the-office/administrative-rules.

The proposed rules can also be viewed online at: http://dlnr.hawaii.gov/dobor/draft-rules.

Location and contact information for DOBOR offices is available online at: http://dlnr.hawaii.gov/dobor/contact.

Ed Underwood, Division of Boating and Recreation presented the submittal.

Board Discussion

Roehrig was concerned whether the end users can afford the proposed fees and put people out of business. He asked if the Small Business Review has any impact on the rates? Underwood noted that it will be taken into consideration.

Yuen commented that the Board should look at the comments after Public Hearings and decide what is reasonable.

Gomes commented that they have received numerous responses from the public and has DOBOR taken that into consideration? Underwood conveyed that they have taken the feed-back into the consideration and will await the Governor's approval to go out to public hearings.

Oi's comment is that having a slip is a privilege. You have commercial groups who use the slips for income and your recreational users. Underwood said it will be different rate for the recreational use, and commercial use. Each individual Harbor will have its own rate.

The Board's discussion revolved around the fees and the impacts it would have and how the appraisal came up with the rates. Underwood conveyed that contrary to what everyone believes, the fees that are in place now, do not cover the basic cost and administrative cost. This would bring us at least cover the costs for maintenance.

MOTION

DEFER (Roehrig, Downing) no vote taken.

The Board asked as well, how is the revenue going to be used? Can you say that improvements will be made at each harbor for transparency and how you are going to do it. Underwood noted that there is 300-million backlog in capital improvements. By Statute, the mooring fees must be used only for mooring purposes.

Conditions:

The Board asked to provide the financial breakdown, deferred maintenance, appraisal information, projected increase, harbor by harbor for review and resubmit the submittal at the next meeting.

Public Testimony-None

Roehrig withdrew his original motion.

MOTION

DEFER with conditions (Roehrig, Oi) unanimous.

- Declare an existing Offshore Mooring Exempt from Requirements of Chapter 343, Hawaii Revised Statues, and Title 11, Chapter 200, Hawaii Administrative Rules, and approve Installation Outside of an Established Offshore Mooring area after-the-fact, Reed's Bay, Hilo, Island of Hawai'i, Hawai'i, for Stephen Frank.
- Declare an existing Offshore Mooring Exempt from Requirements of Chapter 343, Hawaii Revised Statues, and Title 11, Chapter 200, Hawaii Administrative Rules, and approve installation Outside of an Established Offshore Mooring area after-the-fact, Reed's Bay, Hilo, Island of Hawai'i, Hawai'i, for Kuhio Bay Sailing Organization, LLC.

- Declare an existing Offshore Mooring Exempt from Requirements of Chapter 343, Hawaii Revised Statues, and Title 11, Chapter 200, Hawaii Administrative Rules and approve the installation after-the-fact, Mala Wharf Offshore Mooring area, Lahaina, Island of Maui, Hawai'i, for Robert Rocco
- ITEM J-10 Declare installation of an existing Offshore Mooring Exempt from Requirements of Chapter 343, Hawaii Revised Statues, and Title 11, Chapter 200, Hawaii Administrative Rules and approve installation afterthe-fact Outside of an existing Offshore Mooring area, Lahaina, Island of Maui, Hawai'i, for Roger Marlin.
- Declare an existing Offshore Mooring Exempt from Requirements of Chapter 343, Hawaii Revised Statues, and Title 11, Chapter 200, Hawaii Administrative Rules and approve the installation after-the-fact, Mala Wharf Offshore Mooring area, Lahaina, Island of Maui, Hawai'i, for Chad Gerstmar.
- Declare an existing Offshore Mooring Exempt from Requirements of Chapter 343, Hawaii Revised Statues, and Title 11, Chapter 200, Hawaii Administrative Rules and approve the installation after-the-fact, Kaneohe Bay Offshore Mooring area, Kaneohe, Island of O'ahu, Hawai'i for Andrew Tanton.
- ITEM J-13 Declare an existing Offshore Mooring Exempt from Requirements of Chapter 343, Hawaii Revised Statues, and Title 11, Chapter 200, Hawaii Administrative Rules, and approve installation Outside of an established Offshore Mooring Area after-the-fact, Puako Bay, Puako, Island of Hawai'i, Hawai'i, for Carl Von Trampe.

Ed Underwood, Division of Boating and Recreation, requested approval for Items J-5 through J-7 and Items J-9 through 13. for offshore moorings.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Gon, Roehrig) unanimous.

Member Gomes acting Chair adjourned the meeting.

There being no further business, Member Gomes, acting Chairperson adjourned the meeting at 3:50 p.m. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and available for review. Certain Items on the agenda were taken out of sequence to accommodate applicants or interest parties present.

Respectfully submitted,

Darlene S. Ferreira Land Board Secretary

Approved for submittal:

Suzanne D. Case

Chairperson

Department of Land & Natural Resources